

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

United States of America,

Plaintiff,

v.

GJERGI LUKE JUNCAJ,

Defendant.

Case No. 2:22-cr-00008-JCM-EJW

JURY INSTRUCTIONS

1. Duty of Jury
2. Conduct of the Jury
3. Charge Against Defendant Not Evidence—Presumption of Innocence—Burden of Proof
4. Outline of Trial
5. Bench Conferences and Recesses

- 1 6. Duties of Jury to Find Facts and Follow Law
- 2 7. Defendant's Decision Not to Testify
- 3 8. Reasonable Doubt—Defined
- 4 9. What is Evidence
- 5 10. What is Not Evidence
- 6 11. Direct and Circumstantial Evidence
- 7 12. Stipulations of Fact
- 8 13. Credibility of Witnesses
- 9 14. Activities Not Charged
- 10 15. Separate Consideration of Multiple Counts—Single Defendant
- 11 16. On or About—Defined
- 12 17. Duty to Deliberate
- 13 18. Consideration of Evidence—Conduct of the Jury
- 14 19. Use of Notes
- 15 20. Jury Consideration of Punishment
- 16 21. Verdict Form
- 17 22. Communication with Court
- 18 23. Elements of the Offense
- 19 24. Definition of True Threat
- 20 25. Definition Interstate Communications
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1 JURY INSTRUCTION NO. 1:

2 **DUTY OF THE JURY**

3 Jurors: You now are the jury in this case, and I want to take a few minutes to tell
4 you something about your duties as jurors and to give you some preliminary instructions.
5 At the end of the trial I will give you more detailed instructions that will control your
6 deliberations.
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8 When you deliberate, it will be your duty to weigh and to evaluate all the
9 evidence received in the case and, in that process, to decide the facts. To the facts as you
10 find them, you will apply the law as I give it to you, whether you agree with the law or
11 not. You must decide the case solely on the evidence and the law before you.
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13 Perform these duties fairly and impartially. You should not be influenced by any
14 person's race, color, religious beliefs, political beliefs, national ancestry, sexual
15 orientation, gender identity, gender, or economic circumstances. Also, do not allow
16 yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public
17 opinion, or biases, including unconscious biases. Unconscious biases are stereotypes,
18 attitudes, or preferences that people may consciously reject but may be expressed without
19 conscious awareness, control, or intention. Like conscious bias, unconscious bias can
20 affect how we evaluate information and make decisions.
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JURY INSTRUCTION NO. 2:

CONDUCT OF THE JURY

I will now say a few words about your conduct as jurors.

First, keep an open mind throughout the trial, and do not decide what the verdict should be until you and your fellow jurors have completed your deliberations at the end of the case.

Second, because you must decide this case based only on the evidence received in the case and on my instructions as to the law that applies, you must not be exposed to any other information about the case or to the issues it involves during the course of your jury duty. Thus, until the end of the case or unless I tell you otherwise:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This restriction includes discussing the case in person, in writing, by phone, tablet, or computer, or any other means, via email, via text messaging, or any Internet chat room, blog, website or application, including but not limited to Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, TikTok, or any other forms of social media. This restriction also applies to communicating with your fellow jurors until I give you the case for deliberation, and it applies to communicating with everyone else including your family members, your employer, the media or press, and the people involved in the trial, although you may notify your family and your employer that you have been seated

1 as a juror in the case, and how long you expect the trial to last. But, if you
2 are asked or approached in any way about your jury service or anything
3 about this case, you must respond that you have been ordered not to
4 discuss the matter. In addition, you must report the contact to the court.
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6 Because you will receive all the evidence and legal instruction you
7 properly may consider to return a verdict: do not read, watch, or listen to
8 any news or media accounts or commentary about the case or anything to
9 do with it[, although I have no information that there will be news reports
10 about this case]; do not do any research, such as consulting dictionaries,
11 searching the Internet or using other reference materials; and do not make
12 any investigation or in any other way try to learn about the case on your
13 own. Do not visit or view any place discussed in this case, and do not use
14 the Internet or any other resource to search for or view any place discussed
15 during the trial. Also, do not do any research about this case, the law, or
16 the people involved—including the parties, the witnesses or the lawyers—
17 until you have been excused as jurors. If you happen to read or hear
18 anything touching on this case in the media, turn away and report it to me
19 as soon as possible.
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21 These rules protect each party's right to have this case decided only on evidence
22 that has been presented here in court. Witnesses here in court take an oath to tell the
23 truth, and the accuracy of their testimony is tested through the trial process. If you do any
24 research or investigation outside the courtroom, or gain any information through
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1 improper communications, then your verdict may be influenced by inaccurate,
2 incomplete, or misleading information that has not been tested by the trial process. Each
3 of the parties is entitled to a fair trial by an impartial jury, and if you decide the case
4 based on information not presented in court, you will have denied the parties a fair trial.
5 Remember, you have taken an oath to follow the rules, and it is very important that you
6 follow these rules.
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8 A juror who violates these restrictions jeopardizes the fairness of these
9 proceedings, and a mistrial could result that would require the entire trial process to start
10 over. If any juror is exposed to any outside information, please notify the court
11 immediately.
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1 JURY INSTRUCTION NO. 3:

2 **CHARGE AGAINST DEFENDANT NOT EVIDENCE—PRESUMPTION OF**
3 **INNOCENCE—BURDEN OF PROOF**

4 The indictment is not evidence. The defendant has pleaded not guilty to the
5 charges. The defendant is presumed to be innocent unless and until the government
6 proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does
7 not have to testify or present any evidence. The defendant does not have to prove
8 innocence; the government has the burden of proving every element of the charges
9 beyond a reasonable doubt.
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1 JURY INSTRUCTION NO. 4:

2 OUTLINE OF TRIAL

3 The next phase of the trial will now begin. First, each side may make an opening
4 statement. An opening statement is not evidence. It is simply an outline to help you
5 understand what that party expects the evidence will show. A party is not required to
6 make an opening statement.
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8 The government will then present evidence and counsel for the defendant may
9 cross-examine. Then, if the defendant chooses to offer evidence, counsel for the
10 government may cross-examine.

11 After the evidence has been presented, I will instruct you on the law that applies
12 to the case and the attorneys will make closing arguments.
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14 After that, you will go to the jury room to deliberate on your verdict.
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1 JURY INSTRUCTION NO. 5:

2 **BENCH CONFERENCES AND RECESSES**

3 During the trial, I may need to take up legal matters with the attorneys privately,
4 either by having a conference at the bench when the jury is present in the courtroom, or
5 by calling a recess. Please understand that while you are waiting, we are working. The
6 purpose of these conferences is not to keep relevant information from you, but to decide
7 how certain evidence is to be treated under the rules of evidence and to avoid confusion
8 and error.
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10 Of course, we will do what we can to keep the number and length of these
11 conferences to a minimum. I may not always grant an attorney's request for a
12 conference. Do not consider my granting or denying a request for a conference as any
13 indication of my opinion of the case or what your verdict should be.
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1 JURY INSTRUCTION NO. 6:

2 **DUTIES OF THE JURY TO FIND FACTS AND FOLLOW LAW**

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4 Members of the jury, now that you have heard all the evidence, it is my duty to
5 instruct you on the law that applies to this case. A copy of these instructions will be
6 available in the jury room for you to consult.

7 It is your duty to weigh and to evaluate all the evidence received in the case and,
8 in that process, to decide the facts. It is also your duty to apply the law as I give it to you
9 to the facts as you find them, whether you agree with the law or not. You must decide
10 the case solely on the evidence and the law. You will recall that you took an oath
11 promising to do so at the beginning of the case. You should also not be influenced by any
12 person's race, color, religious beliefs, political beliefs, national ancestry, sexual
13 orientation, gender identity, gender, or economic circumstances. Also, do not allow
14 yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public
15 opinion, or biases, including unconscious biases. Unconscious biases are stereotypes,
16 attitudes, or preferences that people may consciously reject but may be expressed without
17 conscious awareness, control, or intention.
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19 You must follow all these instructions and not single out some and ignore others;
20 they are all important. Please do not read into these instructions or into anything I may
21 have said or done any suggestion as to what verdict you should return—that is a matter
22 entirely up to you.
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1 JURY INSTRUCTION NO. 7:

2 **DEFENDANT'S DECISION NOT TO TESTIFY**

3 A defendant in a criminal case has a constitutional right not to testify. In arriving
4 at your verdict, the law prohibits you from considering in any manner that the defendant
5 did not testify.
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1 JURY INSTRUCTION NO. 8:

2 **REASONABLE DOUBT—DEFINED**

3 Proof beyond a reasonable doubt is proof that leaves you firmly convinced the
4 defendant is guilty. It is not required that the government prove guilt beyond all possible
5 doubt.
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7 A reasonable doubt is a doubt based upon reason and common sense and is not
8 based purely on speculation. It may arise from a careful and impartial consideration of all
9 the evidence, or from lack of evidence.

10 If after a careful and impartial consideration of all the evidence, you are not
11 convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find
12 the defendant not guilty. On the other hand, if after a careful and impartial consideration
13 of all the evidence, you are convinced beyond a reasonable doubt that the defendant is
14 guilty, it is your duty to find the defendant guilty.
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1 JURY INSTRUCTION NO. 9:

2 **WHAT IS EVIDENCE**

3 The evidence you are to consider in deciding what the facts are consists of:

4 First, the sworn testimony of any witness; and

5 Second, the exhibits received in evidence.
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JURY INSTRUCTION NO. 10:

WHAT IS NOT EVIDENCE

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence, and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, closing arguments, and have said at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.
2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.
3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

1 JURY INSTRUCTION NO. 11:

2 **DIRECT AND CIRCUMSTANTIAL EVIDENCE**

3 Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact,
4 such as testimony by a witness about what that witness personally saw or heard or did.
5 Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from
6 which you can find another fact.
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8 You are to consider both direct and circumstantial evidence. Either can be used to
9 prove any fact. The law makes no distinction between the weight to be given to either
10 direct or circumstantial evidence. It is for you to decide how much weight to give to any
11 evidence.
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1 JURY INSTRUCTION NO. 12:

2 **STIPULATIONS OF FACT**

3 The parties have agreed to certain facts that have been stated to you. Those facts
4 are now conclusively established.
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JURY INSTRUCTION NO. 13:

CREDIBILITY OF WITNESSES

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account the following:

First, the opportunity and ability of the witness to see or hear or know the things testified to;

Second, the witness's memory;

Third, the witness's manner while testifying;

Fourth, the witness's interest in the outcome of the case, if any;

Fifth, the witness's bias or prejudice, if any;

Sixth, whether other evidence contradicted the witness's testimony;

Seventh, the reasonableness of the witness's testimony in light of all the evidence;
and

Eighth, any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other

1 testimony.

2 However, if you decide that a witness has deliberately testified untruthfully about
3 something important, you may choose not to believe anything that witness said. On the
4 other hand, if you think the witness testified untruthfully about some things but told the
5 truth about others, you may accept the part you think is true and ignore the rest.
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7 The weight of the evidence as to a fact does not necessarily depend on the number
8 of witnesses who testify. What is important is how believable the witnesses were, and
9 how much weight you think their testimony deserves.
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1 JURY INSTRUCTION NO. 14:

2 **ACTIVITIES NOT CHARGED**

3 You are here only to determine whether the defendant is guilty or not guilty of the
4 charges in the indictment. The defendant is not on trial for any conduct or offense not
5 charged in the indictment.
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1 JURY INSTRUCTION NO. 15:

2 **SEPARATE CONSIDERATION OF MULTIPLE COUNTS—**
3 **SINGLE DEFENDANT**

4 A separate crime is charged against the defendant in each count. You must
5 decide each count separately. Your verdict on one count should not control your verdict
6 on any other count.
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1 JURY INSTRUCTION NO. 16:

2 **ON OR ABOUT—DEFINED**

3 The indictment charges that the offenses alleged in the Indictment were committed
4 “on or about” certain dates.

5 Although it is necessary for the government to prove beyond a reasonable doubt
6 that each particular offense was committed on a date reasonably near the date alleged in
7 the indictment, it is not necessary for the government to prove that the particular offense
8 was committed precisely on the date charged.
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JURY INSTRUCTION NO. 17:

DUTY TO DELIBERATE

When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.

Perform these duties fairly and impartially. You should also not be influenced by any person's race, color, religious beliefs, political beliefs, national ancestry, sexual orientation, gender identity, gender, or economic circumstances. Also, do not allow yourself to be influenced by personal likes or dislikes, sympathy, prejudice, fear, public opinion, or biases, including unconscious biases. Unconscious biases are stereotypes, attitudes, or preferences that people may consciously reject but may be expressed without conscious awareness, control, or intention.

1 It is your duty as jurors to consult with one another and to deliberate with one
2 another with a view towards reaching an agreement if you can do so. During your
3 deliberations, you should not hesitate to reexamine your own views and change your
4 opinion if you become persuaded that it is wrong.
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1 JURY INSTRUCTION NO. 18:

2 **CONSIDERATION OF EVIDENCE—CONDUCT OF THE JURY**

3 Because you must base your verdict only on the evidence received in the case and
4 on these instructions, I remind you that you must not be exposed to any other
5 information about the case or to the issues it involves. Except for discussing the case with
6 your fellow jurors during your deliberations:
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8 Do not communicate with anyone in any way and do not let anyone else
9 communicate with you in any way about the merits of the case or anything to do
10 with it. This restriction includes discussing the case in person, in writing, by
11 phone, tablet, computer, or any other means, via email, text messaging, or any
12 Internet chat room, blog, website or any other forms of social media. This
13 restriction applies to communicating with your family members, your employer,
14 the media or press, and the people involved in the trial. If you are asked or
15 approached in any way about your jury service or anything about this case, you
16 must respond that you have been ordered not to discuss the matter and to report
17 the contact to the court.
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19 Do not read, watch, or listen to any news or media accounts or commentary
20 about the case or anything to do with it; do not do any research, such as
21 consulting dictionaries, searching the Internet or using other reference materials;
22 and do not make any investigation or in any other way try to learn about the case
23 on your own.
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25 The law requires these restrictions to ensure the parties have a fair trial based on
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1 the same evidence that each party has had an opportunity to address. A juror who
2 violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial
3 could result that would require the entire trial process to start over. If any juror is exposed
4 to any outside information, please notify the court immediately.
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1 JURY INSTRUCTION NO. 19:

2 **USE OF NOTES**

3 Some of you have taken notes during the trial. Whether or not you took notes,
4 you should rely on your own memory of what was said. Notes are only to assist your
5 memory. You should not be overly influenced by your notes or those of your fellow
6 jurors.
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1 JURY INSTRUCTION NO. 20:

2 **JURY CONSIDERATION OF PUNISHMENT**

3 The punishment provided by law for this crime is for the court to decide. You
4 may not consider punishment in deciding whether the government has proved its case
5 against the defendant beyond a reasonable doubt.
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1 JURY INSTRUCTION NO. 21:

2 **VERDICT FORM**

3 A verdict form has been prepared for you. After you have reached unanimous
4 agreement on the verdicts, your foreperson should complete the verdict form according to
5 your deliberations, sign and date it, and advise the clerk that you are ready to return to
6 the courtroom.
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1 JURY INSTRUCTION NO. 22:

2 **COMMUNICATION WITH COURT**

3 If it becomes necessary during your deliberations to communicate with me, you
4 may send a note through the clerk, signed by any one or more of you. No member of the
5 jury should ever attempt to communicate with me except by a signed writing, and I will
6 respond to the jury concerning the case only in writing or here in open court. If you send
7 out a question, I will consult with the lawyers before answering it, which may take some
8 time. You may continue your deliberations while waiting for the answer to any question.
9 Remember that you are not to tell anyone—including me—how the jury stands,
10 numerically or otherwise, on any question submitted to you, including the question of the
11 guilt of the defendant, until after you have reached unanimous verdicts or have been
12 discharged.
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1 JURY INSTRUCTION NO. 23:

2 ELEMENTS OF THE OFFENSE

3 Jurors: Defendant is charged in Counts One through Four of the Indictment with
4 making anonymous, threatening phone calls in violation of Section 223(a)(1)(C) of Title
5 47 of the United States Code. In order for the defendant to be found guilty of that charge,
6 the government must prove each of the following elements beyond a reasonable doubt:
7

8 **First**, on or about January 7, 2021, the defendant made a telephone call in
9 interstate communications.

10 **Second**, the defendant did not disclose his identity during the telephone call.

11 **Third**, the defendant intended to threaten any specific person.

12 **Fourth**, the statement constituted a "true threat."
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JURY INSTRUCTION NO. 24:

DEFINITION OF TRUE THREAT

Jurors: For the purposes of these instructions, a true threat is a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals, as opposed to “merely idle or careless talk, exaggeration, or something said in a joking manner.

True threats have both an objective and subjective element. To meet the objective element, the government must show that a reasonable person would foresee that the Defendant’s statement would be interpreted by the listener as a serious expression of intent to harm or assault. To meet the subjective element, the government must show that the Defendant meant to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual.

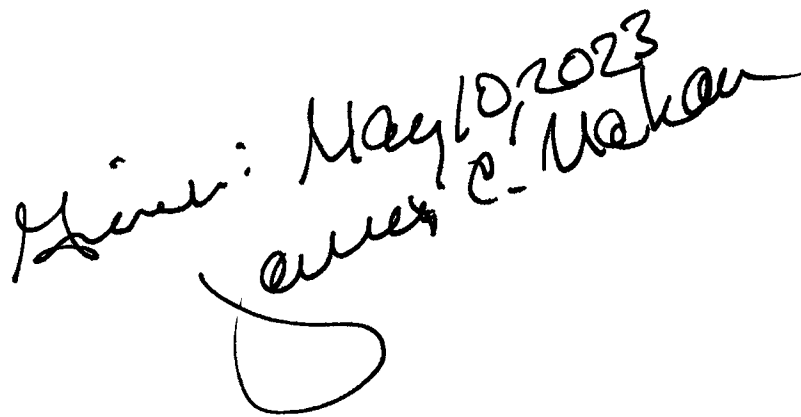
To determine whether a communication is a threat, you should consider the language of the communication; the tone and demeanor of the speaker; the reaction of the listener; whether the statements were communicated publicly or privately, and the entire factual context of the statements, including the surrounding events.

The government need not prove that the defendant intended to carry out the threat, or that he had the present ability to carry out the threat.

1 JURY INSTRUCTION NO. 25:

2 **DEFINITION OF INTERSTATE COMMUNICATIONS**

3 Jurors: A telephone call is an interstate telephone call if it is sent over interstate
4 telephone lines, regardless of where the individuals on the phone calls are physically
5 located. Once the communication crosses state lines, however briefly, the telephone call is
6 interstate even if sender and recipient are both located in the same state. It is not necessary
7 that the defendant know whether a telephone call would be or was made in interstate
8 communications.
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Handwritten signature: "Given: May 10, 2023" and "James C. Mahan" with a large circular flourish below the name.